

## Interpretation

In this Agreement, unless the context otherwise requires:

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Words importing the singular include the plural and vice versa.
- (c) Words importing a gender include any gender.
- (d) References to a person include a natural person, partnership, body corporate, association, governmental or local authority, or agency.
- (e) A reference to any legislation, regulation, code, or standard includes any modification, re-enactment, or substitution of it, and all delegated legislation, regulations, codes, and standards issued under it.
- (f) If an expression is defined, its other grammatical forms have a corresponding meaning.
- (g) Examples or words of inclusion do not limit the generality of the preceding words.
- (h) A reference to a party includes its executors, administrators, successors, and permitted assigns.
- (i) A reference to “including” or “includes” means “including, but not limited to.”
- (j) A reference to currency is to Australian dollars (AUD) unless otherwise stated.

## 1. Definitions

- 1.1 **Agreement** means these Terms and Conditions, together with any Quotation, Service Agreement, Order, Invoice, or other document issued by Fortifire and accepted by the Client, including any amendments agreed in writing.
- 1.2 **Business Day** means a day that is not a Saturday, Sunday, public holiday, or bank holiday in the State or Territory where the Goods and/or Services are to be supplied.
- 1.3 **Client** means the person or entity requesting Fortifire to provide Goods and/or Services, and:
  - (a) if there is more than one Client, each is jointly and severally bound;
  - (b) if the Client is a partnership, each partner is bound jointly and severally;
  - (c) if the Client acts as trustee, the Client is bound in its own capacity and as trustee; and
  - (d) includes the Client’s executors, administrators, successors, and permitted assigns.
- 1.4 **Commencement Date** means the date specified in the Agreement or, if not specified, the date Fortifire first supplies Goods and/or Services under the Agreement.
- 1.5 **Confidential Information** means all non-public information, whether oral, written, or electronic, including but not limited to intellectual property, operational information, know-how, trade secrets, business affairs, contracts, client data (including “Personal Information” such as names, addresses, contact details, date of birth, identification details, and payment information), pricing, and other proprietary information.
- 1.6 **CPI Adjustment** means an increase in pricing based on the Consumer Price Index, applied annually or as otherwise stated in a Service Agreement.

*Note regarding the following three (3) Defect Classifications: For the purposes of clauses 1.7, 1.8, and 1.9, where any of the defect types are defined in an applicable law, regulation, or standard (including the Queensland Building Fire Safety Regulation 2008), that statutory definition will take precedence over the definition in this Agreement to the extent of any inconsistency.*
- 1.7 **Critical Defect** means a defect that has an immediate and significant impact on the safety of the site or people in a fire event, including situations where required safety equipment is missing, severely damaged, discharged, inaccessible, or otherwise unable to be used effectively, and where no alternative protection is in place.
- 1.8 **Non-Critical Defect** means a defect that does not present an immediate safety risk but requires rectification to maintain compliance with laws, regulations, or standards.
- 1.9 **Non-Conformance Defect** means a defect that constitutes a non-compliance with a law, regulation, standard, or code that must be rectified to achieve compliance, but which is not classified as a Critical Defect.
- 1.10 **Fortifire** means Fortifire Pty Ltd (ABN 44 152 787 034) trading as “Fortifire”, its successors, assigns, or authorised representatives.
- 1.11 **Goods** means all physical goods supplied by Fortifire to the Client, whether purchased from suppliers or manufactured, including but not limited to fire extinguishers, hose reels, detectors, alarms, control panels, spare parts, and related equipment.
- 1.12 **Intended Use** means the use for which any building product, component, or system is intended to be, or is reasonably likely to be, associated with the Goods and/or Services.
- 1.13 **Non-Conforming Building Product** means a building product, component, or system associated with the Goods and/or Services that:
  - (a) is not, or will not be, safe; or
  - (b) does not, or will not, comply with the relevant regulatory provisions; or
  - (c) does not perform, or is not capable of performing, for its Intended Use to the standard represented.
- 1.14 **Personal Information** has the meaning given to it in the Privacy Act 1988 (Cth) and includes any information or opinion about an identified individual or an individual who is reasonably identifiable, whether true or not, and whether recorded in a material form or not.
- 1.15 **PPSA** means the Personal Property Securities Act 2009 (Cth) and any regulations made under it, as amended from time to time.
- 1.16 **Price** means the amount payable for the Goods and/or Services, including any applicable taxes, fees, CPI adjustments, and approved variations.
- 1.17 **Quote** means a written offer by Fortifire to supply Goods and/or Services for a stated price, valid for the period specified.
- 1.18 **Service Agreement** means an ongoing agreement between Fortifire and the Client for the supply of inspection, testing, maintenance, or other services over a defined period.
- 1.19 **Services** means all services provided by Fortifire, including but not limited to inspection, testing, maintenance, installation, certification, repairs, consultancy, and related works.
- 1.20 **Site** means the location where the Goods and/or Services are to be delivered, installed, inspected, tested, or maintained.
- 1.21 **Variation** means a change to the scope, timing, or nature of the Goods and/or Services after acceptance of the original Quote or Agreement.

**2. Acceptance of Terms**

- 2.1 The Client is deemed to have accepted and agreed to be bound by this Agreement when the Client:
- (a) signs and returns a copy of the Agreement, Quotation, Service Agreement, or other document referencing these Terms and Conditions; or
  - (b) issues a purchase order or other written instruction to proceed; or
  - (c) accepts delivery of Goods and/or commencement of the Services; or
  - (d) makes any payment towards the Goods and/or Services.
- 2.2 If there is any inconsistency between this Agreement and any other document provided by the Client (including any purchase order terms), this Agreement will prevail to the extent of the inconsistency, unless otherwise agreed in writing by Fortifire.
- 2.3 Any amendment to this Agreement must be in writing and signed by both parties.
- 2.4 If Goods and/or Services are supplied on credit, the supply will not take effect until the Client's credit application is approved by Fortifire with an established credit limit.
- 2.5 Fortifire may, acting reasonably, suspend or refuse delivery of Goods or provision of Services if:
- (a) the value of the supply exceeds the Client's approved credit limit; or
  - (b) the Client's account is overdue; or
  - (c) Fortifire reasonably believes the Client may be unable to meet its payment obligations.
- 2.6 Any advice, recommendations, information, assistance, or services provided by Fortifire in relation to the Goods and/or Services are given in good faith and based on Fortifire's knowledge and experience at the time. Unless expressly confirmed in writing as forming part of the agreed scope, such advice is general in nature and the Client remains responsible for verifying suitability for their specific requirements.
- 2.7 Unless otherwise agreed in writing, the Services will be provided during Fortifire's standard business hours of **Monday to Friday, 7:00 am to 3:30 pm (excluding public holidays)**. Work outside these hours, if agreed, may incur additional charges in accordance with applicable penalty or overtime rates.
- 2.8 Fortifire may accept electronic signatures and other forms of electronic acceptance in accordance with applicable laws (including section 14 of the Electronic Transactions (Queensland) Act 2001 or equivalent legislation in other jurisdictions).

**3. Quotations, Pricing & CPI Adjustments**

- 3.1 Quotes are valid for 30 days unless stated otherwise. Work not included in the Quote will be treated as a Variation.
- 3.2 Pricing is in Australian dollars and excludes GST unless stated. GST will be added at the applicable rate.
- 3.3 CPI Adjustments – For Service Agreements, prices will be reviewed annually and adjusted by the Consumer Price Index (All Groups, Brisbane) unless otherwise agreed in writing.
- 3.4 Minimum Rates – All Service Agreements and call-out work are subject to Fortifire's approved minimum rates and pricing.
- 3.5 Price Changes – Fortifire may adjust prices if:
- (a) the Client requests a Variation;
  - (b) site conditions differ from those advised;
  - (c) supplier or subcontractor costs change; or
  - (d) regulatory or compliance requirements change.
- 3.6 Variations – Variations must be approved by the Client (verbal or written) before work proceeds and will be invoiced at agreed rates.
- 3.7 Payment Terms – Payment is due within the period stated on the invoice. Unless otherwise agreed, Payment terms are per clause 7.5.
- 3.8 Credit Accounts – Where credit is approved, Fortifire may suspend supply if the credit limit is exceeded or an account is overdue.
- 3.9 Payment Methods – Payment may be made by bank transfer, credit card (surcharge may apply), or other approved methods.

**4. Provision of Goods & Services**

- 4.1 Where it is relevant to the delivery of Services under an Agreement, Fortifire agrees to provide the Services in respect of the Equipment to the Client throughout the Term on the terms set out in this Agreement.
- 4.2 Fortifire will use reasonable efforts to start and complete the Services within agreed timeframes.
- 4.3 Timeframes may be extended if delays occur due to events beyond Fortifire's control, including the Client's failure to make selections, have the Site ready, or provide required information.
- 4.4 Delivery of Goods occurs when:
- (a) the Client or their carrier collects them from Fortifire; or
  - (b) Fortifire or its carrier delivers them to the Client's nominated address.
- 4.5 The Client must take delivery when Goods are made available. Additional charges may apply for re-delivery or storage if delivery is delayed due to the Client.
- 4.6 Delivery times are estimates only. Fortifire is not liable for loss or damage from late delivery. or Services may be supplied in instalments, each invoiced separately.
- 4.7 Risk in Goods passes to the Client on delivery. The Client must insure Goods from that time.
- 4.8 If Goods are left unattended at the Client's request, they are left at the Client's risk.
- 4.9 Fortifire may rely on information, plans, and specifications provided by the Client. Fortifire is not liable for errors in that information unless clearly detectable on reasonable review.
- 4.10 The Client warrants that structures, electrical and plumbing connections, and other systems to which Goods are attached are suitable and safe. Fortifire may delay work if conditions are unsafe.
- 4.11 If hazardous materials (including asbestos) are found, Fortifire may suspend work until they are made safe, and the Client will pay any related costs.
- 4.12 Goods supplied may change in appearance over time or be affected by environmental or site conditions.
- 4.13 Where software or data transmission is part of the Goods, Fortifire does not guarantee performance or uninterrupted availability.

**5. Defects & Warranties**

- 5.1 The Client must inspect Goods and Services promptly after delivery or completion and notify Fortifire within 7 days of any visible defects, damage, shortages, or failure to meet agreed specifications.
- 5.2 Defects will be classified as:
- (a) Critical Defects – immediate safety risk requiring urgent rectification;
  - (b) Non-Critical Defects – no immediate significant risk but rectification is required under legislative obligations to maintain fire equipment in a condition consistent with its original designed intent and approval at all times. Rectification must be carried out promptly to remain compliant;
  - (c) Non-Conformance Defects – non-compliance with a law, regulation, standard, or code that is not a Critical Defect or Non-Critical Defect.
- 5.3 Fortifire will provide the Client with a quotation for rectification of any defect it is responsible for. Rectification work will be carried out once the Client has approved the quotation in writing, and will be scheduled subject to Fortifire's available resources, the availability of required parts from suppliers, and other previously approved works. Fortifire will triage and prioritise works based on urgency, safety risk, and compliance requirements.
- 5.4 Fortifire is only responsible for defects in its own workmanship and in parts or equipment it has supplied, in accordance with Fortifire's warranty terms. Fortifire is not responsible for defects caused or contributed to by:
- (a) the Client's failure to maintain the equipment in accordance with legislative or manufacturer requirements;
  - (b) misuse, neglect, or unauthorised modification;
  - (c) fair wear and tear;
  - (d) environmental or site conditions outside Fortifire's control.
- 5.5 If the Client is a consumer under the ACL, Goods and Services come with guarantees that cannot be excluded. The Client is entitled to a replacement, repair, or refund for a major failure, and compensation for other foreseeable loss or damage. For minor failures, Fortifire may choose to repair, replace, or refund.
- 5.6 If the Client is not a consumer under the ACL, Fortifire's liability is limited, at its option, to:
- (a) repair or replacement of Goods;
  - (b) re-supply of Services; or
  - (c) payment of the cost of doing so.
- 5.7 Custom-made or non-stock Goods may not be returned unless defective.

**6. Risk, Insurance and Ownership**

- 6.1 Risk in Goods passes to the Client on delivery to the Site or the Client's nominated location, even if installation or commissioning is still to be completed.
- 6.2 Insurance – the Client must insure Goods from the time of delivery against loss, damage, and theft for their full replacement value.
- 6.3 Site risk – the Client is responsible for providing a safe Site and for all risks associated with the Site during the performance of Services, except to the extent caused by Fortifire's negligence.
- 6.4 Retention of title – Ownership of Goods remains with Fortifire until paid for in full, in accordance with clause 26 (Title & Ownership).
- 6.5 Client property – materials, equipment, or documents provided by the Client remain at the Client's risk at all times.
- 6.6 Fortifire will take out Public Liability insurance to the value specified in the Fortifire Proposal or Quote and will provide evidence of such insurance upon request by the Customer.

**7. Price and Payment**

- 7.1 Price – Unless otherwise agreed in writing, the Price is as stated in Fortifire's Quotation, Service Agreement, or current schedule of rates at the date of supply.
- 7.2 Variations – Prices may be adjusted to reflect:
- (a) changes in supplier prices, freight, or currency exchange rates;
  - (b) increases in wages or statutory on-costs;
  - (c) variations in the scope of work or quantities requested by the Client; and/or
  - (d) increases in existing, or additional, taxes, costs, or expenses incurred as a result of, but not limited to, any statutory changes, directions, or requirements governing the Services provided.
- 7.3 CPI Adjustment – For every 12-month period during the Term and after the expiration of any Initial Term in a Service Agreement, Fees may be increased by Fortifire:
- (a) in accordance with changes in the Consumer Price Index (All Groups) applicable to the capital city of the state or territory in which the Site is located, measured from the Commencement Date; and
  - (b) as otherwise provided in a Service Agreement.
- 7.4 Additional Costs – The Client must pay for disbursements reasonably incurred in performing the Services, including travel, permits, accommodation, subcontractor costs, and all taxes, charges, and fees imposed by any carrier, government, or regulatory body in connection with the provision of the Goods and/or Services, plus any applicable GST.
- 7.5 Invoicing – Fortifire may issue progress claims or invoices for completed stages, delivered Goods, or Services performed.
- 7.6 Payment Terms – Payment is due within 14 days from the invoice date unless otherwise agreed in writing or stated in the Customer Credit Application.
- 7.7 Overdue Payments – If the Client fails to pay any amount by the due date, Fortifire may:
- (a) suspend supply until payment is made in full;
  - (b) charge interest at 10% per annum on overdue amounts, calculated daily from the due date until payment is received in cleared funds;
  - (c) recover from the Client all costs incurred in recovering overdue amounts (including debt collection agency fees, bank dishonour fees, legal costs on a solicitor and own client basis, and internal administration fees);
  - (d) treat any payment reversal, dishonour, or invalid transaction as a default and recover the amount, plus associated costs, where the

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## Fortifire Pty Ltd T/A Fortifire – Terms & Conditions of Trade

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reversal is found to be illegal, fraudulent, or in breach of this Contract; and

(e) without prejudice to any other rights, terminate or suspend any order, and require all amounts owing (whether due or not) to become immediately payable, if:

- the Client exceeds any applicable credit limit;
- the Client becomes insolvent, enters into an arrangement with creditors, or has a receiver, administrator, or liquidator appointed; or
- in Fortifire's opinion, the Client will be unable to make a payment when it falls due.

7.8 Termination or Withdrawal of Work – Where any agreement, purchase order, or contract is terminated or withdrawn, or the work is taken out of Fortifire's hands for any reason, Fortifire retains the right to deliver a claim for payment for work performed, expenses incurred, and materials supplied or procured up to the date of termination or withdrawal.

7.9 GST – Prices are exclusive of GST unless otherwise stated. GST will be added in accordance with the law.

7.10 Deposit – Fortifire may require the Client to pay a deposit before ordering Goods or commencing Services. The deposit amount and payment date will be specified in writing. Fortifire is not required to commence work or order Goods until the deposit is received in cleared funds.

### 8. Delivery, Installation & Provision of Services

8.1 **Delivery dates** – Any delivery, installation, or service date given is an estimate only. Fortifire is not liable for delay outside its control.

8.2 **Site access** – The Client must provide safe, clear, and reasonable access to the Site for delivery, installation, and performance of Services.

8.3 **Delays** – If Fortifire is delayed by the Client, site conditions, other contractors, or events outside its control, Fortifire may:

- (a) extend time for completion; and
- (b) charge the Client for extra costs incurred.

8.4 **Partial delivery** – Fortifire may deliver Goods in instalments, each to be invoiced and paid for separately.

8.5 **Inspection** – Inspection and notification of any issues with Goods or Services must be carried out in accordance with clause 5.1.

### 8.6 Service Agreements:

8.6.1 Subject to clauses 8.6.2 and 8.6.3, a Service Agreement will continue for the Initial Term as stated in the Agreement.

8.6.2 Either party may cancel a Service Agreement prior to the earlier of the Commencement Date by giving at least 48 hours' written notice.

8.6.3 For a fixed-term Service Agreement, an early termination charge may apply where the Client cancels after commencement. Such charge will be limited to Fortifire's reasonable costs and loss actually incurred and not otherwise recoverable.

8.6.4 Unless either party gives the other at least 30 days' written notice of its intention for the Service Agreement to terminate upon expiration of the Initial Term, the Service Agreement will be automatically renewed for successive terms, each equal in length to the Initial Term.

### 9. Cancellation

9.1 Fortifire may cancel any order or contract, or suspend delivery of Goods or Services, at any time before delivery by giving written notice to the Client. On cancellation, Fortifire will refund any money paid by the Client for undelivered Goods or unperformed Services. Fortifire will not be liable for any loss or damage arising from such cancellation.

If the Client cancels an order, the Client must pay Fortifire for:

- (a) all costs, expenses, and losses incurred by Fortifire as a direct result of the cancellation (including loss of profit); and
- (b) the full price of any Goods that are customised, made to order, or non-stock items where production has commenced or an order has been placed with a supplier.

9.2 Orders for customised, made-to-order, or non-stock items cannot be cancelled once production has commenced or an order has been placed with a supplier.

### 10. Cross-Reference to Risk Provisions

Risk in the Goods, insurance obligations, ownership of the Goods, and Fortifire's security interests are dealt with in clauses 6 (Risk & Insurance), 26 (Title & Ownership), and 27 (Personal Property Securities Act 2009). Those clauses apply in full.

### 11. Warranties & Guarantees

11.1 **ACL rights** – Goods and Services supplied by Fortifire come with guarantees that cannot be excluded under the ACL. If the Client is a consumer under the ACL, they are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage, and to have the Goods repaired or replaced if they fail to be of acceptable quality and the failure does not amount to a major failure.

11.2 **Manufacturer warranties** – Materials and parts supplied by Fortifire are covered by the manufacturer's warranty (if any). Fortifire will assist the Client in making a warranty claim with the manufacturer, but the terms, coverage, and remedy are as provided by the manufacturer.

11.3 **Fortifire workmanship warranty** – In addition to ACL rights, Fortifire warrants its workmanship for the period specified in writing at the time of supply.

11.4 **Labour charges for manufacturer claims** – If Goods fail due to a manufacturer defect within the manufacturer's warranty period, Fortifire will arrange a replacement part under that warranty, but labour for removal, installation, and associated works will be charged at Fortifire's standard rates.

11.5 **Limits of warranty** – Fortifire is not responsible for:

- (a) defects caused by misuse, lack of maintenance, accident, or unauthorised modification;
- (b) parts not supplied or work not performed by Fortifire;
- (c) fair wear and tear; or
- (d) damage caused by events outside Fortifire's control.

11.6 **Remedies for non-consumers** – If the Client is not a consumer under the ACL, Fortifire's liability for breach of warranty is limited, at its option, to:

- (a) for Goods – repair, replacement, or supply of equivalent goods;
- (b) for Services – supplying the services again or paying the cost of having them supplied again.

11.7 Warranty claims – The Client must notify Fortifire in writing of any warranty claim promptly and within the applicable warranty period, and give Fortifire reasonable access to inspect and remedy the defect.

## **12. Specific Liability Exclusions**

Without limiting any other provision of these Terms, the Client acknowledges and agrees that:

- 12.1 Access restrictions – Fortifire is not responsible for delays, additional costs, or damage caused by restricted, unsafe, or delayed access to the Site. Any additional costs incurred will be charged to the Client.
- 12.2 Hidden/underground services – Fortifire will take reasonable care when working near underground or hidden services (including but not limited to water, gas, electricity, telecommunications, or drainage). The Client must accurately mark or advise the location of such services. Fortifire is not liable for damage to unidentified or inaccurately marked services.
- 12.3 Client-supplied goods – Fortifire gives no warranty and accepts no liability for parts, materials, or equipment supplied by the Client.
- 12.4 Hazardous materials – If Fortifire encounters hazardous materials (including asbestos, lead paint, or contaminated soil), work will stop until the Client arranges for safe removal by a licensed contractor at the Client's cost. The Client is also liable for Fortifire's costs in stopping and re-establishing the work after such removal. Fortifire is not liable for delays or costs caused by hazardous materials.
- 12.5 Blockages and latent conditions – The presence of plant or tree root growth, other blockages, or latent conditions may indicate damaged pipework or other services. Where Fortifire is engaged only to clear such blockages, no guarantee is given against reoccurrence or further damage. If collapse occurs during clearing, Fortifire will promptly advise the Client and provide an estimate for repairs.
- 12.6 Testing-related damage – During prescribed testing, water, electrical or mechanical damage may occur if system failure happens. Fortifire is not liable to the Client, property owner, or any third party for any damage, loss, or costs (including downtime or damage to connected systems) arising from such events, except to the extent caused by Fortifire's negligence.
- 12.7 Third-party parts and previous work – Fortifire is only responsible for defects in its own workmanship and in parts or equipment it has supplied. Fortifire does not accept liability for any failure caused by parts, equipment, or services provided by others. The Client indemnifies Fortifire for any loss or damage to, or caused by, such parts, equipment, or services.
- 12.8 Site conditions outside Fortifire's control – Fortifire is not liable for delays or additional costs caused by weather events, industrial action, supply chain disruption, or site shutdowns beyond Fortifire's reasonable control.

## **13. Liability & Indemnity**

- 13.1 Australian Consumer Law (ACL) Clarification – The remedies in this clause operate in addition to, and do not limit, any rights or remedies the Client may have under the Australian Consumer Law. Nothing in this Contract excludes, restricts, or modifies any rights, remedies, or guarantees that cannot be excluded under the Competition and Consumer Act 2010 (Cth) (including the ACL) or any other applicable law that cannot lawfully be excluded.
- 13.2 Statutory Guarantees – Where Fortifire fails to comply with a consumer guarantee under the ACL and the failure is not a major failure, Fortifire's liability is limited, at its option, to:
  - (a) supplying the Services again; or
  - (b) paying the cost of having the Services supplied again.
- 13.3 Exclusion of Certain Losses – Subject to clause 13.1 and to the extent permitted by law, Fortifire is not liable for:
  - (a) loss of profit, revenue, opportunity, production, use, or business;
  - (b) any indirect, incidental, special, or consequential loss or damage;
  - (c) loss or damage to property, or personal injury or death, except to the extent caused directly by Fortifire's negligence, wilful misconduct, or fraud; or
  - (d) any delay or failure to provide the Services caused by acts or omissions of the Client, any third party, or events beyond Fortifire's reasonable control (including natural disaster, industrial dispute, or inability to obtain materials or services).
- 13.4 Legitimate Business Interests – The Client acknowledges that Fortifire has no control over the design, condition, usage, occupancy, or maintenance of the Client's premises outside the scope of its contracted Services. The limitations and exclusions in this clause are reasonably necessary to protect Fortifire's legitimate business interests, including its ability to obtain and maintain insurance.
- 13.5 Proportionate Liability – Any liability of Fortifire will be reduced to the extent that the Client or any third party contributed to the loss or damage, including failure to meet responsibilities under this Contract.
- 13.6 Indemnity – The Client indemnifies Fortifire against all loss, damage, liability, cost, or expense (including full indemnity legal costs) suffered or incurred by Fortifire arising from:
  - (a) the Client's breach of this Contract;
  - (b) the negligence, wilful misconduct, or fraud of the Client or its officers, employees, agents, or contractors;
  - (c) any information provided by the Client that is incorrect or misleading; or
  - (d) the Client's failure to carry out, within a reasonable time, any remedial works, repairs, maintenance, or replacements identified by Fortifire as necessary to keep equipment or systems in compliance with laws, regulations, standards, and manufacturer requirements, or failure to resolve any defects identified by Fortifire, except to the extent caused by Fortifire's negligence, wilful misconduct, or fraud.

## **14. Default & Consequences of Default**

- 14.1 Default – The Client is in default if it:
  - (a) fails to pay any amount when due;
  - (b) breaches these Terms and does not remedy the breach within 7 days of notice;
  - (c) becomes insolvent, bankrupt, or under external administration; or
  - (d) ceases, or threatens to cease, trading.
- 14.2 Fortifire's rights on default – If the Client is in default, Fortifire may, without prejudice to any other rights:
  - (a) suspend or cancel delivery of Goods or Services;

- (b) enter the Site to recover Goods under Section 10 and 26;
  - (c) terminate this contract immediately by written notice; and
  - (d) recover all amounts owing, whether due for payment or not.
- 14.3 Termination for convenience – Fortifire may terminate the contract at any time by giving the Client 14 days' written notice. The Client must pay for all Goods supplied and Services performed up to the termination date.
- 14.4 Client termination – The Client may terminate for Fortifire's breach if Fortifire fails to remedy the breach within 14 days of written notice.
- 14.5 Survival – Clauses relating to payment, risk, warranties, liability, indemnities, and dispute resolution survive termination.

## **15. Dispute Resolution**

- 15.1 Good faith negotiations – If a dispute arises, either party may give the other written notice of the dispute. Within 7 days of notice, senior representatives must meet (in person or by phone/video) and use reasonable efforts to resolve the dispute in good faith.
- 15.2 Mediation – If the dispute is not resolved within 14 days after the notice, either party may refer the matter to mediation by an independent mediator agreed by the parties, or failing agreement, appointed by the President of the Law Society of Queensland.
- 15.3 Court or tribunal proceedings – Neither party may start court or tribunal proceedings (except for urgent injunctive or debt recovery action) until it has complied with this clause.
- 15.4 Costs – The parties will share the mediator's fees equally. Each party will bear its own costs of the dispute resolution process.

## **16. Force Majeure**

- 16.1 No liability for delay or failure – Fortifire is not liable for any delay in performing, or failure to perform, its obligations due to events beyond its reasonable control, including but not limited to natural disasters, extreme weather, fire, flood, acts of terrorism, war, industrial disputes, pandemics, government restrictions, supply chain delays, or failure of utilities.
- 16.2 Suspension of obligations – Fortifire's obligations are suspended for the period of the delay or inability to perform caused by the Force Majeure event.
- 16.3 Right to terminate – If a Force Majeure event continues for more than 60 days, either party may terminate the contract by written notice. The Client must pay Fortifire for all Goods supplied and Services performed up to the termination date.

## **17. Privacy**

- 17.1 Collection and use – Fortifire collects personal information from the Client to provide Goods and Services, manage accounts, and meet legal obligations.
- 17.2 Disclosure – Fortifire may disclose personal information to its employees, contractors, suppliers, insurers, professional advisers, credit agencies, and government authorities as required to deliver Goods and Services or comply with the law.
- 17.3 Storage and security – Fortifire takes reasonable steps to protect personal information from misuse, interference, loss, unauthorised access, modification, or disclosure.
- 17.4 Access and correction – The Client may request access to, and correction of, their personal information held by Fortifire, subject to legal restrictions.
- 17.5 Privacy policy – Fortifire's Privacy Policy, available on request or via its website, forms part of these Terms.

## **18. Intellectual Property**

- 18.1 Where Fortifire has designed, drawn, or developed Goods or related documents for the Client, all intellectual property rights (including copyright) in those designs, drawings, and documents remain the property of Fortifire. The Client must not use or reproduce such materials without Fortifire's prior written consent.
- 18.2 All intellectual property rights in any materials, methods, systems, or processes supplied or developed by Fortifire in connection with the Goods or Services remain with Fortifire unless otherwise agreed in writing.
- 18.3 Unless otherwise agreed in writing, the Client is granted a non-exclusive, non-transferable licence to use any intellectual property provided by Fortifire solely for the purpose for which the Goods or Services were supplied.
- 18.4 The Client must not remove, alter, or obscure any proprietary notices on Fortifire's materials and must not reverse-engineer, adapt, or modify such materials without Fortifire's consent.
- 18.5 The Client warrants that any designs, specifications, or instructions provided to Fortifire will not cause Fortifire to infringe any patent, registered design, trademark, or other intellectual property rights of a third party. The Client indemnifies Fortifire against any claims, losses, damages, costs, or expenses arising from such infringement.
- 18.6 The Client agrees that Fortifire may, at no cost, use any designs, drawings, documents, or Goods created by Fortifire for the Client for marketing purposes or entry into industry awards or competitions.

## **19. Confidentiality**

- 19.1 Confidential information – "Confidential Information" includes all information disclosed by either party that is marked or stated as confidential, is by its nature confidential, or would reasonably be considered confidential, including without limitation pricing, quotations, proposals, designs, reports, drawings, specifications, methods, and business information. Personal Information (as defined in clause 31.1) is treated as Confidential Information and is subject to the additional privacy obligations set out in clause 31 (Privacy Policy).
- 19.2 Non-disclosure – Each party must keep the other party's Confidential Information secure and must not disclose it to any third party without prior written consent, except where disclosure is required by law.
- 19.3 Commercial-in-confidence – All quotations, pricing, and proposals provided by Fortifire are strictly commercial-in-confidence. The Client must not disclose such information to any competitor or third party without Fortifire's written consent.
- 19.4 Damages – If the Client breaches clause 19.3, Fortifire may recover from the Client any loss, damage, costs, or expenses (including legal costs on a full indemnity basis) arising from the disclosure, including loss of opportunity or profit.
- 19.5 Clauses 19.2 and 19.3 do not apply to information that is publicly available (other than as a result of breach), already known to the receiving party, or independently developed without reference to the disclosing party's information.

## **20. Termination**

- 20.1 Termination by Fortifire – Fortifire may terminate this agreement immediately by written notice if the Client:
- (a) fails to pay any amount when due under Section 7;
  - (b) breaches any material term of this agreement (including obligations under Sections 5, 7, 8, 9, 11, or 18) and fails to remedy it within 7 days of written notice;
  - (c) becomes insolvent, bankrupt, enters administration, liquidation, or similar;
  - (d) engages another supplier to perform the same or similar work without Fortifire's consent during the term of this agreement.
- 20.2 Termination by the Client – The Client may terminate this agreement if Fortifire breaches a material term (including obligations under Sections 4, 5, 8, 10, or 11) and fails to remedy it within 14 days of written notice.
- 20.3 Effect of termination – Upon termination:
- (a) The Client must pay Fortifire for all Goods supplied, Services performed, and costs incurred up to the termination date (see also Sections 7 and 10);
  - (b) Any deposits paid are non-refundable to the extent they cover costs already incurred;
  - (c) Fortifire may repossess any Goods for which payment has not been received in full, as provided under Section 10.
- 20.4 Without prejudice – Termination does not affect any accrued rights, obligations, or remedies available to either party under this agreement or at law.

## **21. Governing Law & Jurisdiction**

- 21.1 This agreement is governed by the laws of Queensland, Australia.
- 21.2 Each party submits to the exclusive jurisdiction of the courts of Queensland and any courts that may hear appeals from those courts.
- 21.3 The parties waive any right to object to proceedings being brought in those courts on the grounds that it is an inconvenient forum.

## **22. Client Responsibilities**

- 22.1 Access equipment – Fortifire will normally supply any special access equipment (e.g., scaffolding, EWP, scissor lift) required for the Services. If the Client elects to supply such equipment, they must unconditionally ensure it is safe, fit for purpose, and compliant with all safety and licensing requirements, and they remain solely responsible for all associated risks, liabilities, and consequences. Where Fortifire arranges access equipment at the Client's request, the cost will be invoiced to the Client.
- 22.2 Site preparation – The Client must:
- (a) Remove furniture, furnishings, and personal items from the work area. Fortifire is not liable for damage to such items if the Client fails to do so, and a price variation will apply for any additional work, delay, or handling required.
  - (b) Provide all dispensations, permits, and approvals granted by relevant authorities.
  - (c) Provide all building permit drawings, system drawings, and access to onsite knowledge before Services commence.
  - (d) Keep electronically protected areas free from obstacles that may impair system operation.
  - (e) Where required, provide Fortifire with the current Water Authority pressure and flow information in accordance with AS 2419.1.
  - (f) Maintain all system equipment in full operational condition between service visits.
  - (g) Pay for all telephone calls and/or data transmissions originating from the system panel.
  - (h) Ensure adequate legal parking within 8 metres of booster connections and feed hydrants, noting that vehicles cannot drive over charged hoses between hydrants, pump appliances, and boosters.
  - (i) Arrange any required traffic or pedestrian control, or provide at least seven (7) days' notice for Fortifire to arrange it at the Client's cost.
- 22.3 Insurance – The Client must insure any equipment partly or fully installed on site against theft or damage until handover.
- 22.4 Storage – If Fortifire stores Goods, tools, or materials on site, the Client must provide a safe and secure area. The Client is liable for the cost of repair or replacement if such items are lost, stolen, or damaged.
- 22.5 **Additional obligations regarding Equipment (Service Agreements)**  
The Client must:
- (a) maintain all other items which may affect the testing of the Equipment, including (without limitation) test drains, essential power supplies and emergency generator power supplies;
  - (b) provide such other assistance and permit such other access as Fortifire may reasonably require for the proper provision of the Services;
  - (c) comply with all operating and manufacturer maintenance instructions in relation to the Equipment (including any fire safety, electrical and plumbing systems covered by this Agreement);
  - (d) notify Fortifire in writing immediately upon any deterioration, loss or damage to the Equipment; and
  - (e) notify Fortifire in writing immediately if any works, repairs, maintenance, modifications or other services are performed on the Equipment or relevant systems by any person other than Fortifire.

## **23. Access**

- 23.1 Clear access – The Client must provide Fortifire with clear, safe, and continuous access to the site to perform the Services. Fortifire is not liable for loss or damage to the site (including pathways, driveways, concrete, paving, or grassed areas) except where caused by Fortifire's negligence.
- 23.2 Load-bearing capacity – The Client must ensure site access can safely support the weight and operation of laden trucks, lifting equipment, or other machinery required for the Services.

## **24. Underground Locations**

- 24.1 Identification – Before Services commence, the Client must accurately identify and clearly mark the location of all underground services, including (but not limited to) electrical, gas, sewer, pumping, water, irrigation, telephone, fibre optic, oil, and any other underground utilities or services on site.
- 24.2 Liability for damage – Fortifire will take reasonable care to avoid damage to underground services. The Client indemnifies Fortifire against all liability, loss, damage, costs, fines, and consequential losses (including business interruption) arising from damage to services not precisely located and notified to Fortifire under clause 24.1.

## **25. Compliance with Laws**

- 25.1 The Client and Fortifire must comply with all applicable statutes, regulations, and bylaws of government, local, and other public authorities relevant to the Goods and/or Services, including but not limited to: the Electrical Safety Act; the Fire and Emergency Services Act 1990; the Queensland Building Fire Safety Regulation 2008; the Plumbing and Drainage Act 2018; the Plumbing and Drainage Regulation 2019; and the Plumbing Code of Australia (Volume 3 of the National Construction Code).
- 25.2 The Client must obtain, at the expense of the Client, all licences, permits, and approvals required for the Services.
- 25.3 Both parties acknowledge and agree:
- (a) to comply with the National Construction Code of Australia (NCC) **\*\*and\*\*** sections 74AA (products associated with building works and/or intended use) and 74AE (Chain of Responsibility) of the Queensland Building and Construction Commission Act 1991 in respect of all workmanship and building products supplied during the Services; and
  - (b) that Services will be provided in accordance with all current relevant Australian/New Zealand Standards.
- 25.4 Where the Client has supplied products for Fortifire to complete the Services, the Client accepts full responsibility for their suitability, intended use, and any inherent faults. If, in Fortifire's opinion, the supplied products are non-conforming and do not comply with applicable regulations, Fortifire may, without prejudice, suspend the Services until conforming products are sourced. All costs associated with any such change will be invoiced to the Client in accordance with the Price Variation provisions of Section 7.
- 25.5 The Client must ensure the Site complies with all occupational health and safety (OHS/WHS) laws relevant to building and construction sites and with any other relevant safety standards or legislation.
- 25.6 All electrical work will be tested to ensure it is electrically safe and complies with the Wiring Rules and other applicable standards under the Electrical Safety Regulations. All cabling work will comply with all relevant Australian and New Zealand Wiring Standards.

## **Modern Slavery**

- 25.7 For the purposes of this clause:
- (a) "Act" means the Modern Slavery Act 2018 (Cth).
  - (b) "Modern Slavery", "Modern Slavery Statement" and "Reporting Entity" have the meanings given by the Act.
- 25.8 If the Client is a Reporting Entity, it must comply with all of its obligations under the Act.
- 25.9 Whether or not the Client is a Reporting Entity, it must:
- (a) use reasonable endeavours to identify, assess, and address risks of modern slavery practices in its operations and supply chains;
  - (b) ensure that personnel responsible for managing operations and supply chains have undertaken suitable training to identify and report Modern Slavery;
  - (c) take all reasonable steps to address or remove any Modern Slavery practices identified;
  - (d) provide Fortifire with a copy of any Modern Slavery Statement it submits under the Act within seven (7) days; and
  - (e) provide Fortifire, within seven (7) days of request (or longer if agreed), with information or assistance reasonably required to:
    - (i) confirm the Client's compliance with the Act;
    - (ii) outline the Client's operations and supply chains;
    - (iii) enable Fortifire to prepare its own Modern Slavery Statement; or
    - (iv) assess and address Modern Slavery risks.
- 25.10 If the Client breaches this clause or the Act, the parties will attempt to resolve the matter by way of remediation; however, Fortifire may terminate the Contract for any breach.
- 25.11 The Client warrants that any information it supplies to Fortifire under this clause is true, accurate, and may be relied upon.
- 25.12 The Client indemnifies Fortifire against any loss or liability suffered as a result of the Client's breach of this clause.

## **26. Title and Ownership**

- 26.1 Fortifire and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Fortifire all amounts owing to Fortifire; and
  - (b) the Client has met all of its other obligations to Fortifire.
- 26.2 Receipt by Fortifire of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared, or recognised.
- 26.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 26.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to Fortifire on request;
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Fortifire and must pay to Fortifire the proceeds of any insurance in the event of the Goods being lost, damaged, or destroyed;
  - (c) the Client must not sell, dispose of, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes of, or parts with possession of the Goods, then the Client must hold the proceeds of any such act on trust for Fortifire and must pay or deliver the proceeds to Fortifire on demand;
  - (d) the Client must not convert or process the Goods or intermix them with other goods, but if the Client does so, then the Client holds the resulting product on trust for the benefit of Fortifire and must sell, dispose of, or return the resulting product to Fortifire as it so directs;
  - (e) the Client irrevocably authorises Fortifire to enter any premises where Fortifire believes the Goods are kept and recover possession of the Goods;
  - (f) Fortifire may recover possession of any Goods in transit whether or not Delivery has occurred;
  - (g) the Client shall not charge or grant an encumbrance over the Goods nor otherwise give away any interest in the Goods while they remain the property of Fortifire;
  - (h) Fortifire may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
- 26.4 The rights in this clause 26 operate in addition to, and do not limit, Fortifire's rights and security interests under clause 27 (Risk and PPSA). These rights and security interests will have priority over any competing interests or claims to the Goods or their proceeds, to the maximum extent permitted by law.

**27. Personal Property Securities Act 2009 (PPSA)**

- 27.1 In this clause, financing statement, financing change statement, security agreement, and security interest have the meanings given to them by the PPSA.
- 27.2 By accepting these Terms and Conditions in writing, the Client acknowledges and agrees that:
- (a) these Terms and Conditions, together with clause 27 (Title and Ownership), constitute a security agreement for the purposes of the PPSA; and
  - (b) they create a security interest in:
    - (i) all Goods that have been supplied previously by Fortifire to the Client;
    - (ii) all Goods that will be supplied in the future by Fortifire to the Client; and
    - (iii) the proceeds from such Goods.
- 27.3 The Client must:
- (a) promptly sign any further documents and/or provide any further information (complete, accurate, and up-to-date in all respects) which Fortifire may reasonably require to:
    - (i) register a financing statement or financing change statement in relation to the security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clauses 27.3(a)(i) or 27.3(a)(ii);
  - (b) indemnify and, on demand, reimburse Fortifire for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods subject to the security interest;
  - (c) not register a financing change statement in respect of the security interest without Fortifire's prior written consent;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of the Goods in favour of a third party without Fortifire's prior written consent; and
  - (e) immediately advise Fortifire of any material change in its business practices of selling the Goods which would result in a change in the proceeds derived from such sales.
- 27.4 Fortifire and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms and Conditions.
- 27.5 The Client waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 27.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 27.7 Unless otherwise agreed in writing by Fortifire, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 27.8 The Client must unconditionally ratify any actions taken by Fortifire under this clause 27.
- 27.9 Subject to any express provisions to the contrary in this clause 27, nothing in these Terms and Conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 27.10 In the event of any inconsistency between clauses 26 and 27, the clauses will be read together and construed to give Fortifire the maximum lawful protection for its rights and interests in the Goods.

**28. Security and Charge**

- 28.1 In consideration of Fortifire agreeing to supply the Goods and/or Services, the Client:
- (a) charges, as security for the performance of its obligations under these Terms and Conditions (including payment of any money owing), all of its rights, title, and interest—whether joint or several—in any land, real property, or other assets capable of being charged, that the Client owns now or acquires in the future; and
  - (b) grants Fortifire a security interest in all of its present and after-acquired property for the purposes of securing the Client's obligations under these Terms and Conditions, including (but not limited to) registering Fortifire's security interest on the Personal Property Securities Register (PPSR).
- 28.2 The Client indemnifies Fortifire against all costs, expenses, and disbursements (including legal costs on a solicitor-and-own-client basis) incurred by Fortifire in exercising its rights under this clause.
- 28.3 The Client irrevocably appoints Fortifire and each of its directors, jointly and severally, as the Client's true and lawful attorney to do all acts and sign all documents necessary to give effect to this clause, including executing any document on the Client's behalf.
- 28.4 The security interests and charges created by this clause are in addition to, and do not limit, any rights or remedies Fortifire has under Section 27 (Personal Property Securities Act 2009). In the event of any inconsistency, Fortifire may rely on whichever right or remedy provides the greater protection or recovery.

**29. Defects, Warranties, and Returns – Competition and Consumer Act 2010 (CCA)**

- 29.1 The Client's inspection and notice obligations for Goods are as set out in clause 5.1.
- 29.2 Statutory guarantees and warranties under the Competition and Consumer Act 2010 (CCA) and other applicable laws apply as set out in clauses 5.5 and 5.6.
- 29.3 Subject to those statutory rights, the following additional terms apply to returns:
- (a) Returns will only be accepted where:
    - (i) the Client has complied with clause 30.1;
    - (ii) Fortifire has agreed the Goods are defective;
    - (iii) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
    - (iv) the Goods are returned in as close to the same condition as when delivered as is reasonably possible.
  - (b) Fortifire is not liable for any defect or damage caused or contributed to by:
    - (i) the Client's failure to properly maintain or store the Goods;
    - (ii) use of the Goods for a purpose other than that for which they were designed;
    - (iii) continued use of the Goods after any defect became apparent or should have become apparent to a reasonably prudent operator

or user;

(iv) failure to follow any instructions or guidelines provided by Fortifire; or

(v) fair wear and tear, accident, or act of God.

29.4 Fortifire may, at its absolute discretion, accept non-defective Goods for return, in which case Fortifire may charge handling fees of up to thirty percent (30%) of the value of the returned Goods plus any freight costs.

29.5 If Fortifire is required by law to accept a return, it will do so only on the conditions imposed by that law.

29.6 Customised Goods, non-stock items, or Goods made or ordered to the Client's specifications are not acceptable for credit or return, subject to the Client's rights under the CCA.

### **30. Cancellation**

30.1 Without prejudice to any other remedies Fortifire may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Fortifire may suspend or terminate the supply of Goods to the Client. Fortifire will not be liable to the Client for any loss or damage the Client suffers because Fortifire has exercised its rights under this clause.

30.2 Fortifire may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Fortifire shall repay to the Client any money paid by the Client for the Goods. Fortifire shall not be liable for any loss or damage whatsoever arising from such cancellation.

30.3 If the Client cancels Delivery of Goods, the Client shall be liable for all losses incurred (whether direct or indirect) by Fortifire as a direct result of the cancellation (including, but not limited to, any loss of profits).

30.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.

### **31. Privacy Policy**

31.1 All emails, documents, images, or other recorded information held or used by Fortifire that relates to an identified or identifiable individual is "Personal Information" under the Privacy Act 1988 (Cth) and, where applicable, the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR"). Personal Information is also considered Confidential Information under clause 19.1. Fortifire will handle, use, disclose and process all Personal Information in accordance with the Privacy Act, the Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB), and the GDPR (where relevant). If Fortifire becomes aware of a data breach involving the Client's Personal Information that is likely to result in serious harm, Fortifire will notify the Client in accordance with applicable law. Any release of such Personal Information must be in accordance with the Privacy Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.

31.2 Notwithstanding clause 19.1, privacy limitations will extend to Fortifire in respect of Cookies where the Client utilises Fortifire's website to make enquiries. Fortifire may use Cookies and similar technologies (such as pixels and web beacons) to collect Personal Information including: (a) IP address, browser type, email client type and other technical details; (b) tracking website usage and traffic; and (c) email interaction data (e.g., whether emails are opened). If the Client consents to Fortifire's use of Cookies on Fortifire's website and later wishes to withdraw that consent, the Client may manage and control Fortifire's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

31.3 The Client agrees that Fortifire may exchange information about the Client with credit providers and related body corporates for the following purposes: (a) to assess an application by the Client; and/or (b) to notify other credit providers of a default by the Client; and/or (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.

31.4 The Client consents to Fortifire being given a consumer credit report to collect overdue payment on commercial credit.

31.5 The Client agrees that personal credit information provided may be used and retained by Fortifire for the following purposes (and for other agreed purposes or as required by law): (a) the provision of Goods; and/or (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or (d) enabling the collection of amounts outstanding in relation to the Goods.

31.6 Fortifire may give information about the Client to a credit reporting body (CRB) for the following purposes: (a) to obtain a consumer credit report; and/or (b) to allow the CRB to create or maintain a credit information file about the Client including credit history.

31.7 The information given to the CRB may include: (a) Personal Information as outlined in clause 19.1; (b) name of the credit provider and that Fortifire is a current credit provider to the Client; (c) whether the credit provider is a licensee; (d) type of consumer credit; (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested); (f) advice of consumer credit defaults (provided Fortifire is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and Fortifire has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments); (g) information that, in the opinion of Fortifire, the Client has committed a serious credit infringement; (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

31.8 The Client shall have the right to request (by e-mail) from Fortifire: (a) a copy of the Personal Information about the Client retained by Fortifire and the right to request that Fortifire correct any incorrect Personal Information; and (b) that Fortifire does not disclose any Personal Information about the Client for the purpose of direct marketing.

31.9 Fortifire will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.

31.10 The Client can make a privacy complaint by contacting Fortifire via e-mail. Fortifire will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to reach a decision on the complaint within thirty (30) days of receipt of the complaint. If the Client is not satisfied with the resolution provided, the Client can make a complaint to the Office of the Australian Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

### **32. Building Industry Fairness (Security of Payment) Act 2017 (Qld)**

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## Fortifire Pty Ltd T/A Fortifire – Terms & Conditions of Trade

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- 32.1 At Fortifire's sole discretion, if there is any dispute or claim for unpaid Goods and/or Services, the provisions of the Building Industry Fairness (Security of Payment) Act 2017 (Qld) ("the Act") may apply.
- 32.2 Nothing in this Contract is intended to contract out of any applicable provision of the Act, except to the extent permitted by the Act.
- 33. Service of Notices**
- 33.1 Any written notice given under this Contract is deemed to have been given and received:
- (a) by handing the notice to the other party in person;
  - (b) by leaving it at the address of the other party as stated in this Contract;
  - (c) by sending it by registered post to the address of the other party as stated in this Contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), upon receipt of a confirmation of transmission; or
  - (e) if sent by email to the other party's last known email address, at the time of transmission unless a delivery failure notification is received.
- 33.2 Any notice sent by post is deemed to have been served, unless the contrary is shown, at the time when, in the ordinary course of post, the notice would have been delivered.
- 34. Trusts**
- 34.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Fortifire may have notice of the Trust, the Client covenants with Fortifire as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
  - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
  - (c) the Client will not without consent in writing of Fortifire (Fortifire will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust property.
- 35. General**
- 35.1 Entire Agreement – This agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, understandings, and agreements, whether written or oral, relating to its subject matter.
- 35.2 Variation – No amendment or variation to this agreement is valid unless in writing and signed by both parties.
- 35.3 Any dispute or difference arising as to the interpretation of these terms and conditions, or as to any matter arising herein, must be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing and setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties are free to pursue other dispute resolution avenues.
- 35.4 Waiver – A failure or delay by a party to exercise a right or remedy under this agreement is not a waiver of that right or remedy. A waiver must be in writing to be effective.
- 35.5 Severability – If any provision of these terms and conditions is invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions is not affected, prejudiced or impaired.
- 35.6 Governing Law – These terms and conditions, and any contract to which they apply, are governed by the laws of Queensland and are subject to the jurisdiction of the Townsville Courts in that state. These terms prevail over all terms and conditions of the Client (even if they form part of the Client's purchase order).
- 35.7 Subject to clause 15, Fortifire shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Fortifire of these terms and conditions. Alternatively, Fortifire's liability shall be limited to damages which, under no circumstances, shall exceed the Price of the Goods.
- 35.8 Assignment – The Client must not assign or transfer its rights or obligations under this agreement without Fortifire's prior written consent. Fortifire may license and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 35.9 Subcontracting – Fortifire may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Fortifire's subcontractors without the authority of Fortifire.
- 35.10 Amendment of Terms – Fortifire may amend its general terms and conditions for future contracts with the Client by disclosing such amendments to the Client in writing. These changes shall take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Fortifire to provide Goods to the Client.
- 35.11 Force Majeure – Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics, and/or the implementation of regulation, directions, rules or measures enforced by Governments or embargo, including but not limited to any Government-imposed border lockdowns (including worldwide destination ports) or other event beyond the reasonable control of either party ("Force Majeure").
- 35.12 Authority – Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to do so, they are not insolvent, and this Contract creates binding and valid legal obligations on them.
- 35.13 Survival – The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any transaction under this Contract.